

COMPLIANCE BOARD OPINION NO. 03-20

October 21, 2003

Mr. Rudolph Gole

The Open Meetings Compliance Board has considered your complaint that the Commissioners of Pooleville violated the Open Meetings Act by failing to prepare, or to make available to the public, certain minutes. Based on the information available to it, the Compliance Board finds that the Commissioners violated the Act in this regard.

I

Complaint and Response

The complaint comprised letters dated July 10, July 23, and September 5, 2003.¹ The complaint alleged that, with respect to three meetings, the Town Commissioners violated the requirements of the Open Meetings Act relating to minutes. The first of these was the meeting at which Ms. Barbara L. Evans was appointed as Town Clerk. According to a Commissioners' Resolution submitted with the complaint, Ms. Evans "was unanimously appointed to the position of Town Clerk ... in a meeting held in Executive Session and announced and ratified in Open Session ... of February 4, 2003" The complaint asserted: "I have requested numerous times ... for a copy of the minutes of that executive session. Those minutes *do not exist*, nor does there appear to be any record of such a meeting." In addition, the complaint alleged that access to minutes relating to a closed session on March 18, 2002, have not been provided, despite repeated requests. Finally, the complaint alleged that minutes do not exist with respect to a closed session held on January 21, 2003.

In a timely response on behalf of the Commissioners, Charles S. Rand, Esquire, Town Attorney, first lodged a procedural objection: that the complaint was untimely, having been filed more than 45 days after the events identified in the complaint. As to the substance of the complaint, Mr. Rand simply stated his and others' recollection that the appointment of Ms. Evans occurred at the February 4,

¹ The last of these letters was submitted after the Commissioners had responded to the first two letters. The Compliance Board invited the Commissioners to supplement their response in light of the September 5 letter, but no supplementary response was submitted.

2002 Commissioners' meeting. Mr. Rand provided an agenda for that meeting but did not provide any minutes relating to it, nor any information relating to the *prior* "executive session" referred to in the Commissioners' Resolution. Mr. Rand further indicated, with respect to the meeting on March 18, 2002, that the Commissioners had evidently adjourned to a closed session following an open session, but minutes with respect to the closed session could not be located. Finally, Mr. Rand provided the minutes of an open session on January 21, 2003, but did not provide minutes with respect to the closed session referred to in the open session minutes.

II

Timeliness of Complaint

According to Mr. Rand, the Act's provisions requiring a petition *to a court* to be filed "within 45 days after the date of the alleged violation," §10-510(b)(2) and (3),² should be applied to the filing of complaints with the Compliance Board as well. Although acknowledging that this provision by its terms addresses only court actions under the Act, Mr. Rand infers that another provision, extending the short limitations period during the pendency of a Compliance Board complaint, implies that the limitations period is likewise applicable to Compliance Board complaints. This latter provision, §10-510(b)(4), provides as follows:

If a written complaint is filed with the [Compliance] Board in accordance with §10-502.5 ..., the time between the filing of the complaint and the mailing of the written opinion to the complainant and the affected public body under §10-502.5(g) ... may not be included in determining if a claim against a public body is barred by the statute of limitations set forth in paragraphs (2) and (3) of this subsection.

Mr. Rand argued that interpreting the Act as requiring complaints to the Compliance Board to be filed within 45 days of the alleged violation "seems both sound and logical, as one of the primary purposes of statutes of limitations is to cause

² All statutory references in this opinion are to the State Government Article, Maryland Code. The first of these two limitations provisions, §10-510(b)(2), imposes a 45 day statute of limitations with respect to allegations that a public body failed to provide proper notice, invoked an exception under §10-508 improperly, or failed to prepare proper minutes. The other limitations provision, §10-510(b)(3), applies to allegations that the Act's two provisions on public access to meetings were violated. The limitations period for a complaint alleging a violation of §10-505 or §10-507 is "45 days after the public body includes in the minutes of an open session the information specified in §10-509(c)(2)"

complaints to be made sufficiently soon to allow the defendant to investigate the complaint, locate witnesses, and deal with memories which have not faded over time It is certainly logical that the 45-day limitation was intended to cover complaints to the Board for the same reasons.”

We disagree. The Act’s provision on the filing of a complaint to the Compliance Board simply does not contain a comparable limitations period. Under §10-502.5(a), “any person may file a written complaint with the Board seeking a written opinion from the Board on the application of the provisions of this subtitle to the action of a public body covered by this subtitle.” A complaint is to specify, among other things, the date of the public body’s action, §10-502.5(b)(2), but there is no language linking the timing of a complaint to the date of the public body’s action. By contrast, in other provisions regarding the Compliance Board complaint process, the General Assembly imposed specific deadlines – for example, the duty of a public body to file a response to a complaint within 30 days (§10-502.5(c)(2)) and the duty of the Compliance Board to issue an opinion within 30 days after receiving a public body’s response (§10-502.5(d)(2)).

We decline to fashion a limitations period for Compliance Board complaints that the General Assembly did not legislate. *See generally* Compliance Board Opinion 96-9 (October 15, 1996), *reprinted in 1 Official Opinions of the Open Meetings Compliance Board* 178, 180-81 (various provisions of judicial review section of the Act are inapplicable to Compliance Board complaint procedures).

III

Minutes and Closed Meetings

When a public body holds a meeting subject to the Act, “as soon as practicable after [it] meets, it shall have written minutes of its session prepared.” §10-509(b). The minutes of an open meeting are, of course, open to public inspection. §10-509(d). If the session was closed, however, the minutes are ordinarily sealed and not open to inspection. §10-509(c)(3)(iii). In addition, a public body must make certain disclosures about a closed meeting in the minutes of the next ensuing open meeting. For each closed meeting, the public is entitled to know the time, place, and purpose of the meeting, a record of the vote of each member as to closing the meeting, a citation of the authority under the Act for closing the meeting, and a “listing of the topics of discussion, persons present, and each action taken during the session.” §10-509(c)(2).

The Commissioners of Poolesville have provided neither the minutes for the three closed sessions identified in the complaint nor excerpts from open meeting

minutes that contain the required information about the closed meetings.³ Although the Commissioners are under no obligation to provide closed-session minutes to members of the public or to the Compliance Board, their failure to assert that the minutes were prepared – indeed, Mr. Rand’s acknowledgment that the minutes for the March 18, 2002 closed session could not be located – strongly suggests that these minutes were in fact not prepared. This failure is a violation of §10-509(b). Moreover, the Commissioners gave no indication that the requisite open-minutes summary about the closed meetings had been made. Consequently, the Compliance Board can only conclude that the Commissioners violated §10-509(c)(2).

IV

Conclusion

The Commissioners of Poolesville violated the Open Meetings Act if they did not prepare minutes for the meetings discussed in the complaint. Moreover, the Commissioners violated the Act’s requirements for certain disclosures in open-session minutes about those meetings.

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Walter Sondheim, Jr.
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³ There is a discrepancy in the materials supplied about when exactly the meeting occurred at which Ms. Evans was appointed as Town Clerk. The response asserted that the appointment occurred at the February 4, 2002 Commissioners’ meeting. The evidence for that assertion is the agenda for that meeting, which includes as an “announcement” the appointment of Ms. Evans. One might surmise that an “announcement” is of an event that had already occurred, rather than an action yet to be taken at that very meeting. Indeed, the Commissioners’ Resolution says as much. If the Commissioners held a closed meeting on or prior to February 4, 2002 to appoint Ms. Evans, then minutes of that meeting should have been prepared.